



18 SEP 2006

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In re Application of	:	
TEMPLE, Kit	:	
Application No.: 10/541,090	:	DECISION ON
PCT No.: PCT/EP03/51065	:	
Int. Filing Date: 18 December 2003	:	PETITION UNDER
Priority Date: 30 December 2002	:	
Attorney Docket No.: 878A.0011.U1(US)	:	37 CFR 1.47(b)
For: DISTRIBUTING CONTENT DATA	:	

This is a decision on applicant's "Petition Under 37 CFR §1.47(b)," filed in the United States Patent and Trademark Office (USPTO) on 14 April 2006.

BACKGROUND

On 18 December 2003, applicant filed international application PCT/EP03/51065, claiming a priority date of 30 December 2002. A copy of the international application was transmitted to the Office on 10 January 2002. The thirty-month period for paying the basic national fee in the United States expired at midnight on 30 June 2005.

On 29 June 2005, applicant filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 13 December 2005, the Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the surcharge for late filing of the search fee, examination fee, or oath or declaration were required.

On 14 April 2006, applicant submitted a petition under 37 CFR 1.47(b) accompanied by the fee for a five month extension of time.

DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by: (1) the fee under 37 CFR 1.17(g), (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, (4) an oath or declaration by the 37 CFR 1.47(b) applicant on behalf of and as agent for the non-signing inventor, (5) proof that the 37 CFR 1.47(b) applicant has sufficient proprietary interest in the application, and (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage.

Items (1), (3), (4) and (6) have been met. (1) The \$200 petition fee has been paid. (3) The last known address for inventor Kit Temple is listed as Iris House, Pyrford Road, Woking, Surrey GU22 8UQ, United Kingdom. (4) The declaration executed by the 1.47(b) applicant complies with 37 CFR 1.497(a)-(b). (6) Applicant has demonstrated that irreparable harm will result if the application is not permitted to proceed.

Item (2) has not been satisfied. Applicant claims they have been unable to reach inventor Temple, but have not established the basis for this belief. Applicant alleges that a complete copy of the application papers was mailed to Mr. Temple and does not allege that the documents were returned as undeliverable. This does not suggest that the inventor is unavailable. Copies of documentary evidence such as returned mail receipts should be submitted. MPEP 409.03(d).

However, the declaration in support of this petition is entirely lacking in firsthand knowledge of the facts recited therein. Each section, other than the paragraph setting out declarant's name is prefaced with "based upon information and belief". The statement of facts should be made by someone with firsthand knowledge, where possible.

Item (5) has not been met. Applicant has not provided evidence of proprietary interest in the application. Applicant has not provided an assignment or a work agreement in which the inventor agreed to assign the invention to applicant. The declaration is not sufficient to qualify as a legal memorandum of applicable law as set out in MPEP 409.03(f).

CONCLUSION

For the above reasons, applicant's petition under 37 CFR 1.47(b) is **DISMISSED**, without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to timely file the proper response will result in abandonment of this application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(b)". No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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